

## REMARKS

Claims 1-2, 4-7, 18-19, 24-25 and 30-35 are pending in the application. In the Office Action dated July 16, 2003, the Examiner took the following action: (1) rejected claim 2 under 35 USC § 112 as being indefinite; (2) objected to claim 32 due to an informality; and (3) rejected claims 1-2, 4-7, 18-19, 24-25 and 30-35 under 35 USC § 103(a) as being unpatentable over Hammond (U.S. 5,921,046) in view of Ellison (U.S. 5,881,524), and further in view of Berrenberg (U.S. 4,879,855). Applicant respectfully requests reconsideration of the application in view of the foregoing amendments and the following remarks.

The undersigned attorney wishes to express appreciation to the Examiner for his courtesy in conducting a telephone interview with Applicant and with the undersigned attorney on December 16, 2003. Applicant sincerely appreciates the opportunity to discuss the scope of the claims and the patentability of thereof, and greatly appreciates the Examiner's open-minded approach to these topics.

### *I. Rejection of claim 2 under 35 USC § 112, first paragraph.*

Claim 2 was rejected under 35 USC § 112, first paragraph as being indefinite. Specifically, the Examiner opined that the phrase "may be" rendered the claim indefinite. Applicant has amended claim 2 to remove this phrase and therefore to remove indefiniteness from the claim. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

### *II. Objection to claim 32 due to informality.*

Claim 32 was objected to due to an informality. Applicant has amended claim 32 to the informality noted by the Examiner, namely, the "dot after an ending period." Accordingly, Applicant respectfully requests reconsideration and withdrawal of this objection.

**III. Rejection of claims 1-2, 4-7, 18-19, 24-25 and 30-35 under 35 USC**

**§ 103(a).**

As noted above, claims 1-2, 4-7, 18-19, 24-25 and 30-35 have been rejected under 35 USC § 103(a) as being unpatentable over Hammond in view of Ellison and Berrenberg. Applicant respectfully requests reconsideration of claims 1-2, 4-7, 18-19, 24-25 and 30-35 in view of the foregoing amendments and the following remarks.

Some of the technical differences between the applied references and certain embodiments of the invention will now be discussed. Of course, these discussed differences regarding the embodiments, which are disclosed in detail in the patent specification, do not define the scope or interpretation of any of the claims. Where presented below, such discussed differences merely help the Examiner appreciate important claim distinctions discussed thereafter.

In one embodiment in accordance with the present invention, a construction block includes a molded block of polymeric material, and an outer member including a facing layer adapted to substantially cover an exterior surface of the molded block. The outer member further includes a non-planar mesh member having a plurality of first portions embedded within the facing layer and a plurality of second portions embedded within the molded block. The mesh member thereby secures the outer member to the molded block.

Hammond (U.S. 5,921,046)

Hammond teaches a prefabricated building assembly for constructing walls, roofs, and floors. As best shown in Figure 1, Hammond teaches a block having a plastic foam core 12 that is coated on both large parallel sides with an epoxy resin or acrylic and concrete composite coating. 14. Hammond teaches that the plastic foam core 12 is preformed to the desired dimensions (5:12-16), and then the coating 14 is applied onto the sides or end portions of the plastic foam core 12 by manually troweling the coating 14 onto the foam core 12. (5:26-28).

Hammond does not disclose, teach, or fairly suggest the construction block disclosed by Applicant. Specifically, there is no teaching or suggestion in Hammond of an outer member that includes a non-planar mesh member having a plurality of first portions embedded within the facing layer and a plurality of second portions embedded within the molded block. As

described above, Hammond specifies that the coating 14 is applied manually (e.g. by troweling) onto the outer surface of the foam core 12.

Ellison (U.S. 5,881,524)

As best shown in Figure 17, Ellison teaches a block 100 made of lightweight aggregate used with normal concrete blocks. The block 100 has a pair of tapered cores 102 formed therethrough.

Ellison does not disclose, teach, or fairly suggest the construction block disclosed by Applicant. Specifically, there is no teaching or suggestion in Ellison of an outer member that includes a non-planar mesh member having a plurality of first portions embedded within the facing layer and a plurality of second portions embedded within the molded block.

Berrenberg (U.S. 4,879,855)

Berrenberg discloses a polymeric block including a plurality of planar mesh members. As best shown in Figure 4, the planar mesh members 12 are extend transversely across the block 20. A thin, plate-like attachment member 18 is attached to each end of the mesh member 12, and the attachment members 18 are flush with the corresponding outer surfaces 26 of the block 20 (4:60-62; 6:49-55; Fig. 4). According to Berrenberg, any desired facing (or finishing) materials 32 may be attached to the attachment members 18 using screws, nails, penetrating devices, etc. (8:35-55; Fig. 7).

Berrenberg does not disclose, teach, or fairly suggest the construction block disclosed by Applicant. Specifically, there is no teaching or suggestion in Berrenberg of an outer member that includes a non-planar mesh member having a plurality of first portions embedded within the facing layer and a plurality of second portions embedded within the molded block. The mesh members 12 of Berrenberg are planar members, and extend only within the block 20. Berrenberg specifically teaches that the mesh members 12 are not embedded within the facing materials 32, but rather, the facing materials 32 may be attached to the attachment members 18 via an attachment device.

Claims 1-2, 4-7, and 30-31

Turning now to the specific language of the claims, Claim 1 recites a foam construction block comprising a rectangular molded block of foam forming at least one horizontally-extending void and at least one vertically-extending void, at least one of the vertically-extending voids extending between the top and bottom surfaces of said block, and at least one of the horizontally-extending voids extending between the side surfaces of said block, at least one of said horizontally-extending voids intersecting at least one of said vertically-extending voids; and *an outer member including a facing layer adapted to substantially cover an exterior surface of the molded block and a non-planar mesh member having a plurality of first portions embedded within the facing layer and a plurality of second portions embedded within the molded block*, the outer member being bonded to an exterior surface of said block during the molding of the block. (emphasis added).

As described more fully above, Hammond, Ellison, and Berrenberg (the Cited References) do not disclose, teach, or fairly suggest the foam construction block recited in claim 1. More specifically, the Cited References fail to teach or fairly suggest a block having *an outer member including a facing layer adapted to substantially cover an exterior surface of the molded block and a non-planar mesh member having a plurality of first portions embedded within the facing layer and a plurality of second portions embedded within the molded block*. Claim 1 is therefore patentable over the combination of Hammond, Ellison, and Berrenberg.

Claims 2, 4-7, and 30-31 depend from claim 1 and are patentable over the Cited References for the same reasons as claim 1, and also due to additional limitations contained in those claims. For example, Claim 2 recites the foam construction block of claim 1 wherein said facing comprises two facing pieces adhered to said block of foam in abutting relation, such that said block of foam is cut transversely into two pieces, each of which has one of said facing pieces adhered thereto. Claim 5 recites the foam construction block of claim 1 wherein said

mesh member comprises a wire mesh, and claim 6 recites the foam construction block of claim 5 wherein said wire mesh comprises chicken wire. These additional limitations are also not taught or fairly suggested by the Cited References.

Claims 18-19 and 24-25, and newly added Claims 32-35

Similarly, claim 18 recites a foam construction block, comprising a molded block of foam, said block having first and second ends, first and second side faces, and upper and lower faces, and having at least one horizontally-extending void formed along one of the upper and lower surfaces and extending between said end faces, and having a facing member including a facing layer adapted to substantially cover an exterior surface of the molded block and *a non-planar mesh member having a plurality of first portions embedded within the facing layer and a plurality of second portions embedded within the molded block*, the facing member being attached to the block of foam simultaneously with the molding of the block of foam. (emphasis added).

Again, as set forth above, the Cited References do not disclose, teach, or fairly suggest the foam construction block recited in claim 18. Specifically, the Cited References fail to teach or fairly suggest a block having *a non-planar mesh member having a plurality of first portions embedded within the facing layer and a plurality of second portions embedded within the molded block*. Claim 18 is therefore patentable over the combination of Hammond, Ellison, and Berrenberg.

Claims 19 and 24-25, and newly added Claims 32-35 depend from claim 18 and are patentable over the Cited References for the same reasons as claim 18, and also due to additional limitations contained in those claims. For example, claim 33 recites the block of claim 18 wherein said mesh member comprises a wire mesh. Claim 34 recites the block of claim 33 wherein said wire mesh comprises chicken wire. These additional limitations are also not taught or fairly suggested by the Cited References.

Newly Added Claims 36-39

Newly added claim 36 recites, a construction block, comprising a molded block of polymeric material, and an outer member including a facing layer adapted to substantially cover an exterior surface of the molded block and *a non-planar mesh member having a plurality of first portions embedded within the facing layer and a plurality of second portions embedded within the molded block*, the mesh member thereby securing the outer member to the molded block. (emphasis added).

The Cited References do not disclose, teach, or fairly suggest the construction block recited in claim 36. Specifically, the Cited References fail to teach or fairly suggest a block having *a non-planar mesh member having a plurality of first portions embedded within the facing layer and a plurality of second portions embedded within the molded block*. Claim 36 is therefore patentable over the combination of Hammond, Ellison, and Berrenberg.

Similarly, claims 37-39 depend from claim 36 and are patentable over the Cited References for the same reasons as claim 36, and also due to additional limitations contained in those claims. For example, claim 37 recites the block of claim 36 wherein the non-planar mesh member comprises an undulating metallic mesh member. Claim 38 recites the construction block of Claim 36 wherein the non-planar mesh member comprises an undulating wire mesh member. And finally, claim 39 recites the construction block of Claim 36 wherein the non-planar mesh member is approximately co-extensive with the facing layer. These additional limitations are also not taught or fairly suggested by the Cited References.

### CONCLUSION

In light of the foregoing amendments and remarks, Applicant submits that pending claims 1-2, 4-7, 18-19, 24-25 and 30-35, and newly added claims 36-39, are in condition for allowance, and that action is respectfully requested. If there are any remaining matters that can be handled in a telephone conference, the Examiner is kindly invited to telephone the undersigned attorney, Dale C. Barr, at (206) 381-3300.

Respectfully submitted,

BLACK LOWE & GRAHAM<sup>PLLC</sup>



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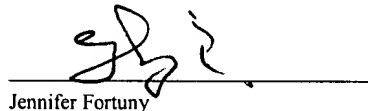
Enclosures:

### MAIL CERTIFICATE

I hereby certify that this communication is being deposited with the United States Postal Service via first class mail under 37 C.F.R. § 1.08 on the date indicated below addressed to: MAIL STOP: FEE AMENDMENT, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22315-1450.

01/16/04

Date of Deposit

  
Jennifer Fortuny